

CONFLICT OF INTEREST AND ETHICS

"Public Officers' and Employees'
Ethics Act".

UTAH CODE, TITLE 67, CHAPTER 16

§67-16-2 Purpose

The purpose of this chapter is to set forth standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests.

§67-16-3 Definitions

- "Agency" means any department, division, agency, commission, board, council, committee, authority, or any other institution of the state or any of its political subdivisions.
- "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity.

Definitions Cont'd

- "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.
- "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.

Definitions Cont'd

- "Controlled, private, or protected information" means information classified as
 - controlled [generally records containing medical, and/or psychological information (compatible with HIPAA)],
 - private [generally records containing personally identifiable information] or,
 - protected [generally records containing data that safeguard against threats to public safety, governmental security, commercial interests]in Title 63G, Chapter 2, Government Records Access and Management Act, or other applicable provision of law

Definitions Cont'd

- "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including:
 - (a) any decision, determination, finding, ruling, or order; and
 - (b) any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.
- "Improper disclosure" means disclosure of controlled, private, or protected information to any person who does not have the right to receive the information.

Definitions Cont'd

- "Public officer" means all elected or appointed officers of the state or any of its political subdivisions who occupy policymaking posts. "Public officer" does not include legislators or legislative employees.
- "Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity.

§67-16-4 Generally Prohibited Activity

It is an offense for a for a public officer/employee to:

- Accept employment or engage in business that requires or induces disclosure of controlled information
- Disclose or improperly use controlled, private or protected information to substantially further the individual or others' personal economic interest or to secure special privileges for him/herself or others

§67-16-4 Generally Prohibited Activity Cont'd

- Use or attempt to use official position to substantially further the individual or others' personal economic interest or to secure special privileges for him/herself or others.
- Accept other employment which could impair independence of judgment or ethical performance of public duties.

§67-16-5 Accepting Gift, Compensation, or Loan

- ECONOMIC BENEFIT TANTAMOUNT TO A GIFT
 - Loan at an interest rate substantially lower than commercial rate
 - Compensation received for private services at a rate substantially higher than fair market value of service performed
- Cannot knowingly receive, accept, take, seek, or solicit, directly or indirectly a gift of substantial value or substantial benefit that:
 - Would tend to improperly influence a reasonable person to depart from faithful, impartial discharge of duties
 - The individual or a reasonable person would know/understand the gift is primarily for the purpose of rewarding the person for official action taken

§67-16-5 Accepting Gift, Compensation, or Loan Cont'd

- If recipient has recently, or will be in the near future, involved in any governmental action directly affecting the donor, unless disclosure is made as required by §67-16-6
- “GIFT” does not apply to:
 - An occasional nonpecuniary gift valued at less than \$50.00
 - An award publicly presented in recognition of public service
 - Any bona fide loan made in the ordinary course of business
 - A political campaign contribution

§67-16-5.3 Requiring Donations - Prohibitions

Cannot condition the granting of an application, permit, approval or other authorization on the donation of personal property, money or services to an agency unless:

- 1) required by statute, ordinance or rule;
- 2) Voluntarily made or mutually agreed to by applicant and entity issuing permit, approval or authorization; or
- 3) Donation is a condition of a settlement or consent decree.

Any donation made has to be disclosed and certified as voluntary.

§67-16-5.6 Offering Donations - Prohibitions

Cannot donate or offer to donate personal property, money or services to an agency on the condition that the agency approve an application, request for permit, approval or other authorization for the donor, unless:

- 1) required by statute, ordinance or rule
- 2) voluntarily made or mutually agreed to by applicant and entity issuing permit, approval or authorization;
- 3) donation is a condition of a settlement or consent decree;
or
- 4) donation is made without condition.

Any donation made has to be disclosed and certified as voluntary.

§67-16-6 RECEIVING COMPENSATION FOR ASSISTANCE IN TRANSACTION

May not receive or agree to receive compensation for assisting any person or business in a transaction involving the agency unless:

- File a sworn statement with head of agency
- File a sworn statement with attorney general
- The statement shall contain
 - Name and address of officer/employee
 - Name and address of agency
 - Name and address of individual or business assisted
 - The transaction and nature of the service performed
- The sworn statement must be filed within 10 days of any agreement between public officer and person/business entity being assisted or the receipt of compensation, whichever is first

§67-16-7 Disclosure Of Substantial Interest In Regulated Business

Every public officer who is an officer, director, agent, employee or owner of a substantial interest in any business entity subject to the regulation by the agency shall by sworn Statement, filed with the AG and the agency:

- Disclose the position held
- Nature and value of the interest
- Any increase or change in the nature and value
 - Does not apply if the value of the interest is less than \$2,000.00
 - Life insurance/annuities not included in calculation

§67-16-8 Participation In Transaction Involving Business Where Individual Has An Interest

Public officer shall not participate in his/her official capacity, or receive compensation for any transaction between the state, or any of its agencies, and any business entity in which such Public Officer is an officer, director, employee or owns a substantial interest, unless disclosure required under §67-16-7 is made.

§67-16-9 Conflict Of Interests Prohibited

No public officer shall have personal investments in any business entity which will create a substantial conflict of interest violates this chapter shall be removed/dismissed and between his private interests and public duties

§67-16-10 Inducing Others To Violate Chapter

No person shall induce or seek to induce any public officer or public employee to violate any of the provisions of this chapter.

§67-16-12 Penalties for violation

Any public officer or employee who intentionally shall be guilty of:

- Felony of the second class if over \$1,000.00
- Felony of the third class if over \$250.00 but not more than \$1,000.00
- Felony of the third class if two prior convictions and \$250.00 or less
- Class A misdemeanor more than \$100.00 but does not exceed \$250.00
- Class B misdemeanor \$100.00 or less

§76-8-105 Receiving or Soliciting a Bribe

- A person is guilty of receiving or soliciting a bribe if that person asks for, solicits, accepts, or receives, directly or indirectly, any benefit with the understanding or agreement that the purpose or intent is to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, of a public servant, party official, or voter.



§76-8-201 Official Misconduct, Unauthorized Acts Or Failure Of Duty

- A public servant is guilty of a class B misdemeanor if, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.



§76-8-202 Official Misconduct Unlawful Acts Based On Inside Information

- A public servant is guilty of a class A misdemeanor if, knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public yet:
 - Acquires or divests of pecuniary interest in property transaction, or enterprise
 - Speculates or wagers on the basis of such action or information
 - Knowingly aids another to do the same



§76-8-203 Unofficial Misconduct

- A person is guilty of unofficial misconduct if he exercises or attempts to exercise any of the functions of a public office when:
 - Individual has not taken or filed oath of office
 - Individual has failed to file/execute required bond
 - Individual has not been elected or appointed to office
 - Exercise the functions of office after term expires and replacement is functioning
 - Exercise the functions of office after removal
 - Individual knowingly withholds documents, seal, papers records etc from successor
 - Violation is a class B misdemeanor



WHO CAN INITIATE AN ACTION?

- Taxpayer
- Grand Jury
- County Attorney
- District Attorney
- Attorney General

Questions?